**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
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CLERK-ALBUQUERQUE

RAYETTA LEDOUX,

Plaintiff,

vs. **No. CIV 00-1622 JP/WWD**

VILLAGE OF ANGEL FIRE, a New Mexico Municipality, BARBARA COTTAM, Individually and as Mayor, RICHARD HILL, Individually and as a Member of the Village Council, EUGENE ERB, Individually and as a Member of the Village Council, ALVIN BUBBA CLANTON, Individually and as Mayor, DONALD LUSK, Individually and as Administrator of Angel Fire, MARVIN SHERIFF, Individually and as Director of Public Works for the Village of Angel Fire,

Defendants.

JURY DEMAND

AMENDED COMPLAINT FOR DAMAGES

COMES NOW, Plaintiff, Rayetta LeDoux, hereinafter referred to as "Ms. LeDoux," by and through her attorney of record, J. Edward Hollington, J. Edward Hollington & Associates, P.A., and states for her Complaint against Defendants as follows:

I. JURISDICTION

1. This action is brought pursuant to 42 U.S.C. § 1981, § 1983, § 2000(e), *et seq.*, the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. § 201, *et seq.*, and the Fourth and Fourteenth Amendments to the United States Constitution.

2. Venue is proper before this Court because all actions, omissions, and transactions occurred within the State of New Mexico.

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3. Plaintiff, Ms. LeDoux, is an Hispanic female who resides in Colfax County, New Mexico. At all times material to this action, Ms. LeDoux was an employee of the Village of Angel Fire.

4. The Village of Angel Fire is an incorporated municipality pursuant to the laws of the State of New Mexico.

5. Defendant Barbara Cottam was the duly elected Mayor of Angel Fire, New Mexico, until March of 2000.

6. Defendant Alvin Bubba Clanton became the Mayor of the Village of Angel Fire in March of 2000 and currently serves in that capacity.

7. Defendant Donald Lusk was hired as Village Administrator on March 1, 2000.

8. Defendant Richard Hill is a duly elected member of the Village Council.

9. Defendant Eugene Erb is a duly elected member of the Village Council.

10. Defendant Marvin Sheriff, is a resident of Angel Fire, Colfax County, New Mexico and at all times material was Deputy Administrator and Director of Public Works for the Village of Angel Fire.

11. The Village of Angel Fire is a person as defined by §701(b) of 42 U.S.C. § 2000(e)(a).

12. The Village of Angel Fire is an employer which is subject to the provisions of the Fair Labor Standards Act (FLSA).

II. STATEMENT OF FACTS

13. Ms. LeDoux began her employment with the Village of Angel Fire in 1989.

14. In November of 1990, Ms. LeDoux assumed duties of the City Clerk for the Village of Angel Fire.

15. In March of 1992, Ms. LeDoux was hired as Village Clerk and she continuously held that position until March 17, 2000.

16. Ms. LeDoux received satisfactory to high level ratings in her job performance as an employee of the Village of Angel Fire.

17. The governing body of the Village of Angel Fire is the Village Council, which is comprised of four elected councilors.

18. The four elected council members and Defendants Mayor Barbara Cottam, Alvin Bubba Clanton, Donald Lusk and Marvin Sheriff are all Anglo.

19. During Ms. LeDoux's employment with the Village of Angel Fire, her duties consisted primarily of clerical, bookkeeping, records maintenance, and supervising local Village elections.

20. During Ms. LeDoux's employment with the Village of Angel Fire, she had no power to hire or fire other employees.

21. During Ms. LeDoux's employment with the Village of Angel Fire, she did not regularly or customarily direct the work of two or more other employees of the Village of Angel Fire.

22. Beginning in February of 1999, Ms. LeDoux was required to "punch" a time clock.

23. Ms. LeDoux did not customarily and regularly exercise discretionary power as an employee of the Village of Angel Fire.

24. Ms. LeDoux was not a management employee as defined by Section 4N of Village of Angel Fire Ordinance No. 93-02.

25. On April 23, 1999, Ms. LeDoux filed a complaint for violations of her civil rights in the United States District Court for the District of New Mexico, *LeDoux v. Cottam and the Village of Angel Fire*, CIV No. 99-0446 JP/LFG.

26. She filed her complaint because of acts of discrimination committed against her because of her race/nationality Hispanic female.

27. On November 22, 1999, Ms. LeDoux, Barbara Cottam and the Village of Angel reached an agreement for settling the complaint.

28. Following the settlement, the Defendants continued to discriminate and retaliate against Ms. LeDoux because she had filed charges of discrimination with the Equal Employment Opportunity Commission and a lawsuit in the United States District Court for violations of her civil rights.

29. Examples of the discrimination and retaliation which continued against Ms. LeDoux and other Hispanic employees were:

> 1. Criticism and humiliation of Ms. LeDoux for signing personal action forms regarding salary increases which forms were signed by other non-Hispanic employees without any public criticism; and
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> 2. She was required to undergo a random drug test when Defendants knew that Ms. LeDoux was no longer performing any duties or functions involving law enforcement or public safety.

30. The Village of Angel Fire did not pay overtime to her and other employees; but instead, had a compensatory time policy, known as "comp time".

31. The Village would allow time off with pay for each hour of overtime worked.

32. On or about November or December of 1999, the Village of Angel Fire announced that it would not allow "comp time" any longer and Ms. LeDoux and other employees who had accumulated "comp time" lost their accrued "comp time".

33. On March 3, 2000, Ms. LeDoux caused a letter to be sent to Defendant Barbara Cottam and the members of the Village Council. The letter detailed Ms. LeDoux's concerns about discrimination and retaliation against her, specifically, compulsory drug testing, the public criticism made of her and not of other non-Hispanics, and statements made by Councilmen Hill and Erb critical of her and other Hispanic female employees' work performance and not of non-Hispanics, and she complained of violations of the Fair Labor Standards Act in failing to pay her overtime.

34. On March 13, 2000, Ms LeDoux did not receive a response to her letter dated March 3, 2000.

35. On March 13, 2000, Defendant Alvin Bubba Clanton terminated the employment of Ms. LeDoux and the termination was approved by Defendants Hill and Erb.

36. On or about April 10, 2000, Ms. LeDoux filed a Charge of Retaliation with the Equal Employment Opportunity Commission (EEOC) as Charge No. 390A00657.

37. On or about August 28, 2000, Ms. LeDoux received her "Right to Sue" letter from the EEOC.

38. As a direct and proximate result of the Defendants' violations of Ms. LeDoux's rights, she has suffered damages and losses of past and future income (front pay and back pay), benefits, compensatory damages of emotional distress and the individual Defendants' conduct constitutes willful, wanton and malicious actions against her, thus entitling her to punitive damages.

COUNT I
VIOLATIONS OF CIVIL RIGHTS, 42 U.S.C. § 1981

39. Plaintiff Ms. LeDoux hereby incorporates all allegations contained in the foregoing paragraphs 1 through 38 above as though the same are fully set forth herein.

40. Ms. LeDoux's acts of filing EEOC charges of discrimination and complaints in U.S. District Court regarding discrimination and her vocal opposition to continuing discrimination, constitutes protected activity.

41. The Defendants intentionally terminated Ms. LeDoux's employment in retaliation for engaging in protected activity and opposition to acts of discrimination against her and others.

42. Ms. LeDoux has incurred attorney fees and costs and is further entitled to reimbursement of such fees and costs.

WHEREFORE, Ms. LeDoux respectfully requests this Court to enter judgment against the Defendants and award her the following relief; back pay, front pay, compensatory damages, prejudgment interest, damages for emotional distress, punitive damages, attorney fees and costs and for such other and further relief as the Court just and appropriate.

COUNT II
RETALIATION 42 U.S.C. § 2000, *et seq.*

43. Plaintiff Ms. LeDoux hereby incorporates all allegations contained in the foregoing paragraphs 1 through 42 above as though the same are fully set forth herein.

44. Ms. LeDoux was qualified for the position of Village Clerk.

45. Ms. LeDoux's acts of filing charges of discrimination, lawsuit for violation of her civil rights, and opposition to acts of discrimination against her and other Hispanics is protected activity under Title VII of the Civil Rights Act.

46. Defendants terminated Ms. LeDoux's employment in retaliation for her participation in protected activity.

47. Ms. LeDoux has incurred attorney fees and costs and is further entitled to reimbursement for such fees and costs.

WHEREFORE, Ms. LeDoux respectfully requests this Court to enter judgment against the Defendants and award her the following relief; back pay, front pay, prejudgment interest, fringe benefits, compensatory damages, reimbursement for attorney fees and costs and such other and further relief as the Court deems just and appropriate.

COUNT III
VIOLATIONS OF FLSA

48. Plaintiff Ms. LeDoux hereby incorporates all allegations contained in the foregoing paragraphs 1 through 47 above as though the same are fully set forth herein.

49. Pursuant to FLSA, the Village of Angel was to provide "comp time" at a rate of one and one-half (1 & 1/2) hours for every hour worked over forty (40) hours per week. [See 29 U.S.C. § 207(o)(1)].

50. The Village of Angel Fire did not provide "comp time" at the rate of one and one-half (1 & 1/2) hours as required by FLSA.

51. On or about November or December of 1999, the Village of Angel Fire canceled all accumulated "comp time" and did not pay Ms. LeDoux or other employees for accumulated "comp time".

52. Ms. LeDoux is entitled to be paid for her accumulated "comp time" and is further entitled to payment for uncompensated "comp time" prior to the date the Village of Angel Fire canceled all "comp time".

53. The Village of Angel Fire knew of should have known it was violating the FLSA and intentionally deprived Ms. LeDoux of her rights under the statute.

54. On March 3, 2000, Ms. LeDoux sent a written complaint to the Village of Angel Fire objecting to the violations of FLSA.

55. In response to Ms. LeDoux's complaints of violations under the FLSA, the Village terminated her employment.

56. Ms. LeDoux's letter of March 3, 2000, constitutes "any complaint" as defined by 29 U.S.C. § 215(a)(3).

57. Ms. LeDoux has incurred attorney fees and costs and is further entitled to reimbursement for such fees and costs.

WHEREFORE, Ms. LeDoux respectfully requests this Court to enter judgment against the Defendants and award her the following relief pursuant to FLSA; unpaid overtime pay, reimbursement for accrued "comp time", loss of income plus benefits, liquidated damages, reinstatement, attorney fees and costs, prejudgment and post-judgment interest, and such other and further relief as the Court deems just and appropriate.

COUNT IV
VIOLATIONS OF 42 U.S.C. § 1983

58. Plaintiff Ms. LeDoux hereby incorporates all allegations contained in the foregoing paragraphs 1 through 57 above as though the same are fully set forth herein.

59. On March 1, 2000, Ms. LeDoux was ordered to undergo a drug test. At the time Ms. LeDoux was ordered to undergo the drug test, she was not performing any duties involving public safety or public transportation.

60. Ms. LeDoux did not voluntarily consent to the drug test, but proceeded with the drug test for fear of losing her job.

61. The drug test was negative for any illegal substances.

62. The acts of the Defendants constitute an unlawful search and seizure and invasion of privacy.

63. The Defendants' actions constitute deprivation of Ms. LeDoux's constitutional rights as protected by the Fourth Amendment to the United States Constitution.

64. Defendants denied Ms. LeDoux equal protection based on her race and national origin by treating her differently than similarly situated non-Hispanic employees.

65. Defendants engaged in discriminatory and retaliatory actions against Ms. LeDoux because of her race and national origin.

66. Defendants Clanton, Hill and Erb terminated Ms. LeDoux's employment when they refused to reappoint her to the Village Clerk position.

67. The Defendants reappointed Defendant Lusk and Police Chief Morey, both non-Hispanic males, to their positions.

68. Defendants terminated and failed to reappoint Ms. LeDoux because of her race and nationality.

69. Ms. LeDoux suffered compensatory damages in the form of lost income, back pay and front pay, loss of benefits, and she suffered emotional distress as a result of the Defendants' violations of her rights.

70. The conduct of the Defendants was wanton, willful and malicious.

71. Ms. LeDoux has incurred attorney fees and costs and is further entitled to reimbursement for such fees and costs.

72. The acts of the Defendants cited herein are acts done under "color of state law".

73. The individual named Defendants' [Hill, Erb, Clanton, Lusk and Sheriff] actions constitute final decision makers of the Defendant Village of Angel Fire.

WHEREFORE, Ms. LeDoux respectfully requests this Court to enter judgment against the Defendants and award her the following damages for compensatory damages in the form of lost income, back pay, front pay, benefits, emotional distress, punitive damages, prejudgment and post-judgment interest, attorney fees and costs, and such other and further relief as the Court deems just and appropriate.

COUNT V
VIOLATION OF 42 U.S.C. § 1983 [FIRST AMENDMENT]

74. Plaintiff Ms. LeDoux hereby incorporates all allegations contained in the foregoing paragraphs 1 through 73 above as though the same are fully set forth herein.

75. Ms. LeDoux's statements regarding discrimination, retaliation, and violations of FLSA constitute matters of public concern.

76. Ms. LeDoux's statements of public concern did not unreasonably interfere with operations of the Village government.

77. The Defendants, Richard Hill's, Eugene Erb's, Alvin Bubba Clanton's, and Donald Lusk's actions in terminating Ms. LeDoux's employment were done under "color of state law".

78. The Defendants, Richard Hill, Eugene Erb, Alvin Bubba Clanton, and Donald Lusk constitute final decision makers regarding Ms. LeDoux's employment. Defendants terminated Ms. LeDoux's employment in retaliation for her exercising her First Amendment rights.

79. The conduct of the Defendants was wanton, willful, and malicious.

80. Ms. LeDoux has suffered compensatory damages in the form of lost income, back pay, front pay, loss of benefits, and she suffered emotional distress as a result of the Defendants' violations of her rights.

81. Ms. LeDoux has incurred attorney fees and costs and is entitled to reimbursement for such fees and costs.

WHEREFORE, Ms. LeDoux respectfully requests this Court to enter judgment against the Defendants and award her the following damages for compensatory damages in the form of lost income, back pay, front pay, benefits, emotional distress, punitive damages, prejudgment and post-judgment interest, attorney fees and costs, and such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

J. EDWARD HOLLINGTON & ASSOCIATES, P.A.

By______________________________

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